A **TSANG YEE KWAN**

v.

MAJLIS PERBANDARAN BATU PAHAT

B COURT OF APPEAL, PUTRAJAYA
ABDUL MALIK ISHAK JCA
KANG HWEE GEE JCA
AZHAR MA'AH JCA
[CIVIL APPEAL NO: J-01-102-2009]
C 8 MARCH 2011

CIVIL PROCEDURE: *Striking out - Action - Claim for trespass - Entry into land with consent - Whether there was trespass - Whether appeal against striking out allowed*

D ***AGENCY:*** *Liability - Vicarious liability - Trespass - Appellant claiming trespass by respondent as principal for third party's alleged trespass onto lands - Third party entered land for respondent's purpose - Whether respondent vicariously liable - Whether respondent a party to agreement made between appellant and third party - Whether doctrine of privity* E *applicable - Whether appellant had knowledge of third party's activities on lands - Whether agreement ratified by appellant*

The appellant was the registered owner of five pieces of land ('lands'). The respondent was a municipal council which entered F into an agreement with a company called OSM Alliance Holding Sdn Bhd ('OSM') to operate solid waste disposal sites on designated areas. OSM subsequently entered into a sale and purchase agreement ('SPA') with the appellant for the purchase of her lands to fulfil its obligations with the respondent under the G earlier agreement. A day after OSM had entered into the SPA, the respondent was informed that the lands were ready for use and a request was made for the commencement date to start operation. However, the site was subsequently closed down by the authorities upon OSM's failure to provide an environment H assessment impact report ('EIA') under the Environmental Quality Act 1974 to the authorities concerned. The SPA was then terminated and the deposit forfeited. The appellant as plaintiff brought a claim in the High Court against OSM as 1st defendant and the respondent as the 2nd defendant for trespass. It was the I appellant's case that OSM had entered and trespassed onto her lands carrying out activities connected with the solid waste agreement without her consent and knowledge despite the non-

completion of the SPA. The learned Judicial Commissioner ('JC') struck off her action upon an application made by the respondent under O. 18 r. 19 of the Rules of the High Court 1980 ('RHC'). The appellant now appealed against the striking out of her action.

Held (dismissing the appeal)
Per Abdul Malik Ishak JCA delivering the judgment of the court:

(1) The appellant's complaint was made about two months after the solid waste disposal site was closed and after the SPA was terminated. No complaint was made by the appellant during the currency of the SPA or before the closure of the site. (para 18)

(2) The learned JC correctly found that there was no trespass on the lands on the ground that OSM must have been permitted to enter the lands by the appellant. The said site could not have been completed in one day after the signing of the SPA based on the nature and size of its facilities. The appellant must have known of OSM's activities on the lands and had permitted them to be there before she had signed the SPA. Therefore, the respondent could not be faulted for OSM's alleged trespass. (paras 21 & 27)

(3) The doctrine of privity established that only parties to a contract incurred rights and obligations under the contract. Third parties could not sue or be sued under a contract. As the SPA was between the appellant and OSM, the doctrine of privity favoured the respondent. (para 27)

(4) The appellant was unable to show any agency relationship between the respondent and OSM. The solid waste disposal agreement *per se* could not create nor establish an agency relationship between the respondent and OSM. The respondent did not participate in the construction of the site and only came to know that the site was ready for use by the respondent *via* letter a day after the SPA was entered into by OSM. The relationship between the respondent and OSM was purely contractual based on the said agreement. The closure of the site by the authorities was due to OSM failing to provide the EIA report. (paras 35 & 36)

(5) The question of ratifying the SPA by the respondent did not arise for consideration on the facts of the case. The facts were straightforward and it was an appropriate case for striking out. (para 42)

Bahasa Malaysia *Translation Of Headnotes*

Perayu adalah pemilik berdaftar lima keping tanah ('tanah-tanah tersebut'). Responden adalah majlis munisipal yang telah memasuki satu perjanjian dengan sebuah syarikat yang dipanggil OSM Alliance Holding Sdn Bhd ('OSM') untuk membina tapak-tapak bagi pembuangan sisa pepejal di kawasan-kawasan yang ditandakan oleh OSM. OSM kemudiannya telah memasuki satu perjanjian jual beli ('SPA') dengan perayu untuk pembelian tanah-tanah tersebut bagi memenuhi obligasinya dengan responden di bawah perjanjian sebelum ini. Sehari selepas OSM memasuki SPA dengan perayu, responden diberitahu yang tanah-tanah tersebut telah siap sedia untuk digunakan dan terus meminta tarikh untuk memulakan operasi. Ianya didapati bahawa tapak tersebut kemudiannya telah diperintah tutup oleh pihak berkuasa berkenaan disebabkan kegagalan OSM membekalkan satu laporan penilaian kesan ke atas persekitaran ('EIA') di bawah Akta Kualiti Alam Sekeliling 1974. SPA kemudiannya dibatalkan dan deposit dilucuthakkan. Perayu sebagai plaintif telah membawa tindakan di Mahkamah Tinggi terhadap OSM sebagai defendan pertama dan responden sebagai defendan kedua untuk pencerobohan tanah. Ianya adalah kes perayu bahawa OSM telah memasuki dan menceroboh tanah-tanah tersebut bagi menjalankan aktiviti-aktiviti berhubungan perjanjian sisa pepejal tanpa kebenarannya meskipun SPA tidak disempurnakan. Yang arif Pesuruhjaya Kehakiman ('JC') telah membatalkan tindakan perayu atas permohonan responden di bawah A. 18 k. 19 Kaedah-Kaedah Mahkamah Tinggi 1980 ('RHC'). Perayu kini merayu keputusan membatalkan tindakannya itu.

Diputuskan (menolak rayuan)
Oleh Abdul Malik Ishak HMR menyampaikan penghakiman mahkamah:

(1) Aduan perayu telah dibuat dua bulan selepas tapak pembuangan sisa pepejal ditutup dan selepas SPA ditamatkan. Tiada aduan telah dibuat oleh perayu semasa perjalanan SPA atau sebelum penutupan tapak tersebut.

(2) Yang Arif JC betul mendapati bahawa tiada pencerobohan tanah-tanah tersebut atas alasan bahawa OSM semestinya telah dibenarkan oleh perayu untuk memasuki tanah-tanah tersebut. Tapak tersebut tidak mungkin disiapsediakan dalam satu hari selepas SPA ditandatangani memandangkan keadaan dan kebesaran kemudahan-kemudahannya. Perayu semestinya ada pengetahuan mengenai aktiviti-aktiviti OSM atas tanah-tanah tersebut dan telah membenarkannya sebelum menandatangani SPA. Dengan itu, responden tidak boleh disalahkan untuk pencerobohan OSM yang dikatakan.

(3) Doktrin priviti menetapkan bahawa hanya parti-parti kepada kontrak mempunyai hak-hak dan obligasi-obligasi di bawah kontrak tersebut. Pihak ketiga tidak boleh mendakwa atau didakwa di bawah kontrak tersebut. Disebabkan SPA adalah di antara perayu dan OSM, doktrin priviti memihak kepada responden.

(4) Perayu tidak dapat menunjukkan sebarang hubungan ejensi di antara responden dengan OSM. Perjanjian pembuangan sisa pepejal sahaja tidak boleh mewujudkan atau menetapkan satu hubungan ejensi di antara responden dan OSM. Responden tidak mengambil bahagian dalam pembinaan tapak tersebut dan hanya dapat tahu yang ianya siap disediakan melalui surat oleh responden, sehari selepas SPA ditandatangani oleh OSM. Hubungan di antara responden dan OSM hanya kontraktual sahaja berasaskan perjanjian tersebut. Penutupan tapak oleh pihak berkuasa disebabkan OSM tidak membekalkan laporan EIA tersebut.

(5) Persoalan ratifikasi SPA oleh responden tidak wujud untuk pertimbangan atas fakta kes. Fakta kes terus terang dan ianya merupakan kes yang sesuai untuk dibatalkan.

Case(s) referred to:

Affin Bank Berhad v. Eye Bee Sdn Bhd [2005] 1 LNS 291 HC ***(refd)***
Basely v. Clarkson [1682] 3 Lev 37 ***(refd)***
Beswick v. Beswick [1968] AC 58 ***(refd)***
Braithwaite v. South Durham Steel Co Ltd And Another [1958] 1 WLR 986 ***(refd)***
Ellis v. The Loftus Iron Company [1874] LR 10 CP ***(refd)***
Freeman And Lockyer (a firm) v. Buckhurst Park Properties (Mangal), Ltd And Another [1964] 1 All ER 630 ***(refd)***
Hely-Hutchinson v. Brayhead Ltd, And Another [1968] 1 QB 549 ***(refd)***
Hillen And Pettigrew v. I.C.I. (Alkali), Limited [1936] AC 65 ***(refd)***
Kepong Prospecting Ltd & Ors v. Schmidt [1967] 1 LNS 67 PC ***(refd)***

Oversea-Chinese Banking Corp Ltd v. Woo Hing Brothers (M) Sdn Bhd [1992] 2 CLJ 1050; [1992] 3 CLJ (Rep) 171 HC ***(refd)***
Pet Far Eastern (M) Sdn Bhd v. Tay Young Huat & Ors [1999] 2 CLJ 886 HC ***(refd)***
Smith v. Stone [1647] Style 65 ***(refd)***
Stoke-on-Trent City Council v. W & J Wass Ltd [1988] 1 WLR 1406 ***(refd)***
Turner v. Thorne [1959] 21 DLR (2d) 29 ***(refd)***
Tweddle v. Atkinson, Executive of Guy, Deceased [1861] 1 B & S 393 ***(refd)***
Yelloly v. Morley [1910] 27 TLR 20 ***(refd)***

Legislation referred to:
Contracts Act 1950, s. 2(d)
Rules of the High Court 1980, O. 18 r. 19(1)(b), (d)

For the appellant - Shahareen Begum Abdul Subhan; M/s Imran, Shahareen & Co
For the respondent - Mohd Ashri Rais; M/s Faimah Zahrah & Co

[Appeal from High Court, Muar; Civil Suit No: 22-153-2006]

Reported by Usha Thiagarajah

JUDGMENT

Abdul Malik Ishak JCA:

Introduction

[1] We shall refer the parties to what they were referred to by the learned Judicial Commissioner ("JC") of the High Court. Thus, Tsang Yee Kwan – the appellant before us, will be referred to as the plaintiff. While OSM Alliance Holding Sdn Bhd – not a party before us, will be referred to as the first defendant. While Majlis Perbandaran Batu Pahat – the respondent before us, will be referred to as the second defendant.

[2] On 22 November 2006, the plaintiff filed a claim against the second defendant and the first defendant for trespass over her lands allegedly committed by the first defendant as the second defendant's agent.

[3] The second defendant filed an application to strike out the plaintiff's claim under O. 18 r. 19(1)(b) or (d) of the Rules of the High Court 1980 ("RHC") and the deputy registrar allowed the second defendant's application. The plaintiff appealed to the judge

in chambers and the learned JC of the High Court dismissed the plaintiff's appeal with costs. Aggrieved, the plaintiff now appeals to us.

The Facts

[4] The plaintiff is the registered owner of five pieces of land held under HS(M) 470 PT 714, GM 211 Lot 693, GM 379 Lot 3652, EMR 1966 (now GM 4326) Lot 3653, and EMR 926 (now 4195) Lot 1695 (hereinafter referred to as the "said lands").

[5] By a sale and purchase agreement ("SPA") dated 2 March 2006, the plaintiff agreed to sell and the first defendant agreed to purchase the said lands at the purchase price of RM1,852,812.50 on, *inter alia*, the following terms and conditions:

(a) Deposit of RM185,281.25 payable in two instalments:

(i) RM100,000 upon execution of the said SPA; and

(ii) RM85,281.25 to be paid on or before 10 March 2006.

(b) The balance of the purchase price in the sum of RM1,667,531.25 to be paid on or before 1 June 2006.

(c) Vacant possession to be delivered to the first defendant upon payment of the balance of the purchase price.

[6] By reason of the first defendant's failure to complete the said purchase, the SPA was terminated and the deposit was forfeited.

[7] The purpose of the first defendant's purchase of the said lands was to fulfill its obligations with the second defendant pursuant to the solid waste disposal agreement dated 16 December 2005 entered between the first defendant and the second defendant. By virtue of the solid waste disposal agreement, the second defendant had appointed the first defendant to operate a solid waste disposal site on designated areas to be provided by the first defendant.

[8] One day after the first defendant had entered into the SPA to purchase the said lands from the plaintiff and that was on 3 March 2006, the first defendant informed the second defendant that the said lands were ready for use and requested for the commencement date.

[9] By letter dated 15 March 2006, the second defendant informed the first defendant that the second defendant's officers had visited the site on 9 March 2003 and suggested that some improvements ought to be made to the said lands.

[10] By letter dated 24 March 2006, the first defendant again informed the second defendant that the said lands were ready for use and requested to commence work on 1 April 2006.

[11] It was averred by the plaintiff that the first defendant on the instructions of the second defendant had entered and trespassed onto the said lands and carried out all those activities connected with the solid waste disposal agreement without the consent and knowledge of the plaintiff and despite the non-completion of the SPA.

[12] The photographs at pp. 213 to 237 of the appeal record at Jilid 3 and at pp. 247 to 250 of the same appeal record reflected entry to the said lands.

[13] By letter dated 20 April 2006, the director of the environmental department of the State of Johore instructed the second defendant to issue a stop work order to the first defendant pending the submission of the environment assessment impact ("EIA") report under the Environmental Quality Act 1974 (Act 127).

[14] By letter dated 21 April 2006, the first defendant's consultant known as Messrs Yucax Sdn Bhd wrote to the director of the environmental department of the State of Johore for extension of time to prepare and submit the EIA report.

[15] By letter dated 27 April 2006, the second defendant requested the first defendant to submit the EIA report to the environmental department of the State of Johore on an expeditious basis.

[16] By letter dated 8 May 2005, the second defendant ordered the first defendant to close down the said lands by 9 May 2006 pursuant to the decision of the Johore State Executive Council.

Analysis

[17] It was the stand of the plaintiff that the first defendant had entered into her lands – the said lands, without her permission and had cleared her oil palm trees, dug holes to dump solid waste and,

in fact, dumped solid waste onto her lands. The plaintiff also alleged that the first defendant had constructed office complex and carried out other damaging activities to make way for the solid waste disposal site and that these activities were carried out by the first defendant as the second defendant's agent. Flowing from all these, it was argued that the second defendant was vicariously liable as principal.

[18] But the plaintiff's complaint was only made in July 2006 - some two months down the road after the solid waste disposal site on the said lands was closed and after the SPA was terminated. It must be borne in mind that no complaint was ever made by the plaintiff during the currency of the SPA or before the solid waste disposal site on the said lands was closed.

[19] It cannot be denied that as a municipal council, the second defendant's duty is to provide for a solid waste disposal site for its population. With the closure of the solid waste disposal site at Kampung Kelicap, Batu Pahat, the need for a new site was quite pressing. By virtue of the solid waste disposal agreement between the first defendant and the second defendant, the responsibility of securing a new site was placed on the shoulders of the first defendant, so to speak. And when the first defendant entered into the SPA to purchase the said lands from the plaintiff, the second defendant was not a party to the SPA nor privy to it. The second defendant too was not the principal behind the SPA.

[20] It was argued that there was no trespass as alleged by the plaintiff for the simple reason that the plaintiff had permitted the first defendant to enter and clear the said lands even before the SPA was signed and the activities carried out on the said lands were within the plaintiff's knowledge. Put in another way, the plaintiff had given her blessings.

[21] The learned JC found that there was no trespass on the strength of the first defendant's letter dated 3 March 2006 as seen in exhibit marked "TYK9", which letter was issued a day after the date of the SPA wherein the second defendant was informed that the site for the solid waste disposal was ready for use (see p. 198 of the appeal record at Jilid 3). From this very letter, the learned JC drew a strong inference that as the site for the solid waste disposal on the said lands was already completed a day after the SPA was signed, the first defendant was permitted to enter the said lands by the plaintiff long before the SPA was

signed otherwise. It would not be possible for the first defendant to complete the site on the said lands in one day bearing in mind the nature and size of the facilities as reflected in the photographs as alluded to earlier. We agree with the learned JC that the plaintiff actually knew about the activities on her lands – the said lands, and permitted the first defendant to carry out those activities long before the signing of the SPA.

[22] In legal jargon, an intrusion by one person upon land in the possession of another is said to be trespass. According to Coleridge CJ in *Ellis v. The Loftus Iron Company* [1874] LR 10 CP, at p. 12 that, "... if the defendant place a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it."

[23] And any invasion of land, however minute and whether it causes damage or not, is a trespass. Thus, it is trespass to place anything on or in land in the possession of another.

[24] Anyone who has a right of entry upon another's land and acts in excess of his right or after his right has expired, is said to be a trespasser (*Hillen And Pettigrew v. I.C.I. (Alkali), Limited* [1936] AC 65, HL).

[25] It is also trite to say that every continuance of a trespass is a fresh trespass, in respect of which a new cause of action arises from day to day so long as the trespass continues. A trespasser cannot put up the defence of a mistake of law or fact unless the physical act of entry was voluntary. A classic example would be where the boundary between the plaintiff's and the defendant's land being ill-defined, the defendant in mowing his own grass by mistake mows some of the plaintiff's grass (*Basely v. Clarkson* [1682] 3 Lev. 37), or where a delivery man delivers goods by mistake to the wrong address and places them on the land of the owner without his consent (*Turner v. Thorne* [1959] 21 DLR (2d) 29). But if the entry is involuntary, then there is no trespass (*Smith v. Stone* [1647] Style 65; and *Braithwaite v. South Durham Steel Co Ltd And Another* [1958] 1 WLR 986).

[26] It must be emphasised that in an action for trespass, it is not necessary that there should have been any actual damage (*Stoke-on-Trent City Council v. W & J Wass Ltd* [1988] 1 WLR 1406, CA, at 1411, per Nourse LJ). A trespass is committed and

it is so committed notwithstanding the trifling nature of the trespass. It is no defence to say in an action for trespass that the trespass is of a trifling nature (*Yelloly v. Morley* [1910] 27 TLR 20).

[27] On the facts of the present appeal, the entry of the said lands by the first defendant had the blessings of the plaintiff. She knew about the activities on her lands and she permitted it to happen even before signing the SPA. The second defendant was not a party to the signing of the SPA and cannot be faulted for the purported trespass by the first defendant on the said lands. It is trite law that only the parties to a contract incur rights and obligations under the contract. This is known as the privity rule. The second defendant as a third party to the SPA is not a party to the contract and has not provided consideration for the contract but the second defendant as a third party has an interest in the performance of the contract. It has been a long established rule that only the parties to a contract could incur rights and obligations under it. This is described as the doctrine of privity and by this principle it simply means that third parties could neither sue nor be sued under a contract.

[28] Thus, where a contract was made for the benefit of a third party, that third party has no rights under it. A classic example would be the case of *Tweddle v. Atkinson, Executive of Guy, Deceased* [1861] 1 B & S 393. In that case, the plaintiff was engaged to be married and his father and future father-in-law made a contract providing that each of them would give a certain sum of money to the plaintiff. And even though the contract expressly provided that the plaintiff was to be entitled to enforce the contract yet the court held that he could not do so.

[29] Another case in point would be that of *Beswick v. Beswick* [1968] AC 58, HL. In that case, the plaintiff's husband sold his business to his nephew in return for an annual allowance to be paid to himself and, after his death, to his widow. Once the husband died, the nephew refused to make payments to the widow. Despite the fact that the husband had clearly intended her to benefit from the contract, it was held that the widow could not sue the nephew on her own behalf because she was not a party to the contract. Fortunately, however, the court was able to get round the doctrine because the widow was also the executor of her husband's estate and could, therefore, sue on behalf of the estate.

[30] The Privy Council's decision in *Kepong Prospecting Ltd & Ors v. Schmidt* [1967] 1 LNS 67 PC, on appeal from Malaysia, reinforces the principle that a person who is not a party to a contract has no right to sue on the contract. This decision also supports the view that the doctrine of privity of contract is distinct from the rule that consideration must move from the promisee. Thus, even though consideration may move from a third party under s. 2(d) of the Contracts Act 1950, the position in Malaysia is this. That a third party cannot enforce a contract (*Kepong*'s case *(supra)*; and *Oversea Chinese Banking Corp Ltd v. Woo Hing Brothers (M) Sdn Bhd* [1992] 2 CLJ 1050; [1992] 3 CLJ (Rep) 171).

[31] Knowing that the SPA was between the plaintiff and the first defendant and taking advantage that, firstly, there was no trespass over the said lands by the first defendant and, secondly, the privity of contract principle favoured the second defendant, the second defendant applied to strike out the plaintiff's claim under O. 18 r. 19(1)(b) or (d) of the RHC. The second defendant was entitled to rely on any or all of the grounds specified in r. 19 of O. 18 of the RHC. The second defendant could rely on more than one of sub-paragraphs (a) to (d) in r. 19 of O. 18 of the RHC. At this juncture, it is ideal to reproduce O. 18 r. 19 of the RHC:

> **19 Striking out pleadings and indorsements (O. 18 r. 19)**
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> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that:
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> (a) it discloses no reasonable cause of action or defence, as the case may be; or
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> (b) it is scandalous, frivolous or vexatious; or
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> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court;
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> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
>
> (2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

[32] Low Hop Bing J (now JCA) in *Affin Bank Berhad v. Eye Bee Sdn Bhd* [2005] 1 LNS 291, aptly said that only in conspicuously unsustainable cases that a pleading generally and a claim specifically would be struck out under any limb of O. 18 r. 19(1) of the RHC and that such power would only be exercised by the court sparingly.

[33] And in *Pet Far Eastern (M) Sdn Bhd v. Tay Young Huat & Ors* [1999] 2 CLJ 886, the court held that the root word is not "unsustainable" but rather "obviously", which denotes that on the face of it, the claim must be plainly or evidently unsustainable in law.

[34] Here, the learned JC was correct, on the facts and the law, to dismiss the plaintiff's appeal emanating from the decision of the deputy registrar who allowed the second defendant's application to strike out the plaintiff's claim.

[35] In regard to the issue of agency, we have this to say. The plaintiff was unable to show any agency relationship between the second defendant and the first defendant in connection with the alleged trespass. The solid waste disposal agreement *per se* cannot create nor establish an agency relationship between the second defendant and the first defendant that implicated the second defendant in the trespass.

[36] The second defendant upon receipt of the first defendant's letter dated 3 March 2006, came to know that the site was ready for use and the second defendant did not participate in the construction of the site as seen in the photographs. The relationship between the second defendant and the first defendant was purely contractual pursuant to the solid waste disposal agreement. Since the first defendant failed to provide the EIA report, the authorities closed down the site on the said lands.

[37] An agent is an intermediary of the principal rather than a true party to the contract. A person will be treated as being the principal's agent in three circumstances:

A (a) where there is express authority;

(b) where there is implied authority; and

(c) where there is apparent (also referred to as ostensible) authority.

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[38] Express authority arises when the agent has been specifically asked to make the contract in question. While implied authority arises where the agent is asked to do something which by implication requires the contract to be made. Lord Denning MR C in *Hely-Hutchinson v. Brayhead Ltd, And Another* [1968] 1 QB 549, CA, at p. 583 aptly said:

> It is express when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is implied when it is inferred from the D conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director.

[39] Apparent authority – also referred to as ostensible, arises E where the principal's past behaviour gives the other party to the contract reason to believe that the agent has authority to contract on the principal's behalf. Here, it is said that the agent's authority is not real. That is why it is labelled as "apparent" or "ostensible" and it is not derived from the consent of the principal and agent. F Rather it is the product of the principal's representation to the third party that the agent has authority as an agent. Lord Diplock LJ in *Freeman And Lockyer (a firm) v. Buckhurst Park Properties (Mangal), Ltd. And Another* [1964] 1 All ER 630, CA, succinctly said at p. 644:

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> An 'apparent' or 'ostensible' authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted on by the contractor, that the agent has authority to enter on behalf of the principal into a H contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed on him by such contract. To the relationship so created the agent is a stranger.

I **[40]** A classic example of an "apparent" or "ostensible" authority can be appreciated in this simple situation: where a firm employs Joni whose duties include buying stationery, and Joni as the agent orders the stationery from the usual supplier and has the bill sent

to the firm. Joni later leaves the firm, but the stationery supplier is not told. If Joni apparently collects an order as usual, the firm may be liable for the price, even though Joni no longer has actual authority to buy for the firm.

[41] The law is settled. Where an agent makes a contract which lies outside the authority granted by the principal, or where the agent in fact has no authority at all, the principal may nevertheless choose to ratify the contract, so long as the agent was purporting to act on the principal's behalf at the time the contract was made and the principal had the capacity to make the contract at that time. Once a contract is ratified by the principal, it becomes binding on the principal.

[42] Here, on the facts, the second defendant was not the principal to the first defendant. The first defendant was not the agent of the second defendant. There was no privity of contract between the plaintiff and the second defendant. It was the first defendant who entered the said lands with the knowledge of the plaintiff and, consequently, there was no trespass at all. So, the question of ratifying the SPA by the second defendant did not arise for our consideration. The facts here are quite straight forward and it was an appropriate case for striking out. It is quite pointless to proceed to trial.

[43] For the reasons alluded to above, we dismissed the plaintiff's appeal with costs of RM5,000. We affirmed the decision of the learned JC. Deposit ought to go to the second defendant as part of the costs.

[44] My learned brother Azhar Hj Ma'ah, JCA has expressed his concurrence with this judgment. The other panel member, Kang Hwee Gee, JCA has since retired.